IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 137 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUBHAI CHINTRABHAI KOLI

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

MS BANNA S DUTTA for Petitioner

MR KT DAVE, APP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. Petitioner-Madhubhai Chintrabhai Koli of Mahuva came to be externed from the areas of the districts of Bhavnagar, Amreli, Junagadh and Rajkot, by virtue of an order passed by Sub-Divisional Magistrate, Mahuva, district Bhavnagar, on August 20, 1999, for a period of

two years in exercise of powers under Section 56 of the Bombay Police Act.

2. The externing authority, before passing the order issued a notice upon the proposed externee/petitioner as required under Section 59 of the Bombay Police Act, setting out the allegations on basis of which the externment order was proposed to be passed. The proposed externee gave a reply and the externing authority, after holding externment proceedings, passed the impugned order. The order was carried in appeal, as required under Section 60 of the Bombay Police Act, and the appeal also came to be dismissed.

3. The order is based on the broad allegations of nefarious activities of bootlegging, eveteasing, robbery, intimidating, etc. by the externee/petitioner and, therefore, it was deemed proper to extern the petitioner from not only Bhavnagar district, but also from contiguous districts. The authority observed that in these scientific days of telephone net work and speedy transport, the petitioner may operate from adjoining districts and, therefore, he is required to be externed from the contiguous districts as well.

4. The petitioner assails the order of externment on various grounds. However, Ms. Datta, learned advocate appearing for the petitioner, has pressed into service the ground of order of externment having been passed in respect of contiguous districts without assigning proper reasons. In support of her argument, she has placed reliance on the decision of this Court in the case of Dafer Rahman Zarar v. State of Gujarat & Ors., 1999(1) GLH 425 and submitted that following the decision, wherein such order is held to be bad in law, this petition may be allowed.

5. Mr. K.T. Dave, learned Additional Public Prosecutor, has opposed this petition.

6. Having regard to rival side contentions, it is clear that the externing authority, both in the notice as well as in the order, has stated that the petitioner may operate from neighbouring districts with the help of modern technical advancements like telephone and speedy transport. Barring this, there is nothing to indicate that the petitioner has any mooring in the adjoining districts, which may possibilise his operation from the adjoining districts. Whatever allegations are there, are in respect of areas falling in the Bhavnagar district. In this regard, it would appropriate to refer to the

observations made by this Court in the case of Dafer Rahman Zarar (supra):

"8. The Externing Authority had issued show-cause notice to the petitioner probably in respect of his activities confined in village Dhrol, district Jamnagar but he has chosen to pas the order of externment against the petitioner from four districts, viz. Jamnagar, Rajkot, Junagadh and Kachchh. No reason has been given by the Externing Authority why the petitioner had been externed from four districts. The only observation on this point in the judgment of the Externing Authority is as under :

".....if he is externed only from the Jamnagar district, then in this advance mechanical age, it is likely that he will continue his aforesaid activities. Therefore, it is proper to extern the aforesaid person from Jamnagar District and the nearby districts, i.e. Rajkot, Kachchh and Junagadh.

From the above observations, it is clear that no reason has been given except advance mechanical age which is yet to be understood only by the Externing Authority and not by the Court. This has also rendered the order of the Externing Authority invalid."

Apart from this judgment, an earlier judgment of this Court, passed by a Division Bench in the case of Vrajlal Mohanlal v. District Magistrate, Rajkot and Another, as reported in 1962 GLR 807, may also be referred. It was observed :

"...As we have pointed out, under Section 56, the District Magistrate has the power to remove or extern the petitioner not only from the district within which the Magistrate has jurisdiction, but also from districts contiguous to his own district. The object of externment, as provided for under Section 56, is to remove the externee from his own district where he has been carrying on his criminal activities so as to uproot him from his own surroundings and to sever him from his associates thereby reducing the degree and the extent of his activities. But, if the Magistrate has reasonable grounds to believe from the date before him that the removal of an

externee from his own district would not be sufficient and would not prevent the externee from continuing his criminal activities or from being a menace to the members of the public or to public safety, then he has the power to extern him from contiguous districts as well. It is, however, clear from the provisions of Section 56 itself that such a belief, though it might be a subjective one, must be arrived at from materials and data before the authority, viz. whether without removing such a person from contiguous districts as well, the danger envisaged by Section 56 cannot be averted. Therefore, there must be some indication either by way of reasons or otherwise in the order itself that the authority had reasonable ground to believe that it was necessary to remove such a person from a wider area than his own district."

It was further observed :

"..In other words, there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern the petitioner from the district of Rajkot, but also from the districts contiguous to Rajkot district. Such circumstances must be qua every area or region from which the petitioner is directed to be externed and there must be some material or indication of such material in the impugned order. This becomes necessary especially as the notice served upon the petitioner mostly narrates instances alleged to have been taken place within the limits of Rajkot. That would show that the area where where the petitioner was said to have indulged in criminal and other undesirable activities was limited at most to the district of Rajkot. That being the position, there had to be some material before the authority that mere externment of the petitioner from the district of Rajkot would not be adequate in order to achieve the purpose for which such orders of externment are made justifiable under Section 56 of the Act."

7. Thus, it is clear from the above propositions laid down by a Division Bench of this Court as well as by learned Single Judge of this Court that the externing

authority must have some material before it to satisfy itself about the possibility of the externee operating from adjoining districts and then only, the order externing him from such adjoining districts can be passed. In the instant case, no affidavit is filed by the externing authority. There is no material to indicate such satisfaction. The only reason assigned is the speedy transport facilities and telephones. In this regard, it may be noted that telephone facilities are available and would be available from any corner of the country and, therefore, that by itself could not have formed a genuine basis for externing the petitioner from contiguous districts. The order of externment, therefore, is rendered bad in law and cannot be supported. The petition, therefore, deserves to be allowed.

8. In view of the above discussion, the petition is allowed. The impugned order of externment dated 20th August, 1999 and the order passed by the appellate authority dated 3rd December, 1999 are, hereby, quashed and set aside. Rule is made absolute.

[A.L. DAVE, J.]
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